

Claims 1-4 and 38 are again rejected under 35 U.S.C. 102(b) as being anticipated by Van Lommen et al

.Claims 1-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Lommen et al. Both rejections are for the reasons of record.

Claims 1-37 and 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Lommen et al in view of Jans et al, US Patent 5,759,580, cited by applicants.. The former is used as before to show the that fractional crystallization of the ethane dioic acid salt of the N-benzyl derivative of a diastereomeric mixture of N-benzyl-nebivolol diastereomers (i.e. + and – RSSS and + and – RSRR) can be used to produce a racemic mixture of RSSS and SRRR N-benzyl-nebivolol. The latter in Ex. 1 discloses the analogous purification of unprotected nebivolol using the hydrochloric acid salt. Thus it would have been obvious for the ordinary worker in the art to use hydrochloric acid to prepare the HCl salt of the protected N-benzyl nebivolol in this procedure.

Applicant's arguments filed 9-2-2009 have been fully considered but they are not persuasive. In Ex. 22 it is true that a chromatographic step is done before the acid salt is made and subjected to the fractional recrystallization step, it is certain that diastereomeric purification occurs in the last step.

See also p. 7, first par. which states that diastereomers may be separated by physical separation methods such as selective crystallization and chromatographic techniques.mixtures.

Most importantly see that after the chromatographic step that an oily residue is obtained. This is not indicative of an enantiomeric mixture.

After the oily residue is converted to the salt with ethanedioic acid in 2-propanol and then filtered and then crystallized from ethanol, the pure enantiomeric mixture of ethanedioate salts of the RSSR form of instant I is obtained.

Note the AB notation of the reference corresponds to the RSSS and its enantiomeric SRRR form. See p. 7, lines 17-31.

Because of the new rejection this action is not final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bernard Dentz whose telephone number is 571-272-0683. The examiner can normally be reached on Mon-Fri from 8 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres, can be reached on 571 572-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/ Bernard Dentz/

Primary Examiner, Art Unit 1625

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